

HQ W563394

October 11, 2006

RR:CTF:VS W563394 KSG

CATEGORY: Classification

Port Director
Bureau of Customs and Border Protection
555 Battery Street
San Francisco, California 94111

RE: Request for Internal Advice; documentation requirements under subheading 9801.00.10(EN)

Dear Director:

This is in response to your Request for Internal Advice of November 7, 2005, initiated by counsel on behalf of **Varian Medical Systems** concerning the documentation requirements under subheading 9801.00.10(EN) of the Harmonized Tariff Schedule of the United States ("HTSUS").

FACTS:

Customs issued a Focused Assessment Report for **Varian Medical Systems** ("**Varian**") on May 30, 2003, with findings in value, classification and subheading 9801.00.10(EN), HTSUS. **Varian** submitted compliance improvement plans for the deficient areas on August 28, 2003, which were not implemented.

Varian submitted a prior disclosure on April 11, 2005, claiming that certain goods were eligible for duty-free treatment under subheading 9801.00.10(EN), HTSUS. The validity of the prior disclosure is not the subject of this Internal Advice.

To support its subheading 9801.00.10(EN), HTSUS claims, **Varian** submitted to Customs & Border Protection ("CBP") invoices and manufacturer's affidavits as proof of U.S. origin. Your port reviewed this information, found some discrepancies and asked for additional

information, including export records containing part numbers and unique identifiers such as serial numbers, along with bills of lading as proof of the U.S. origin of the goods in question.

Varian has failed to provide CBP with the additional information requested to support the subheading 9801.00.10(EN), HTSUS claim.

LAW AND ANALYSIS:

Subheading 9801.00.10(EN), HTSUS, provides that products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad can be entered duty free provided the documentary requirements of 19 CFR 10.1 are satisfied.

The regulatory language in 19 CFR 10.1(a) requires that for goods in a shipment valued over \$2000 and claimed to be free of duty under subheading 9801.00.10(EN), a declaration from a foreign shipper is required. Further, 19 CFR 10.1(b) states that the port director "may require, in addition to the declarations required in paragraph (a) of this section, such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment. Such other documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles."

Counsel argues that the regulations only require that the importer submit a foreign shipper affidavit and declaration. We find that this argument has no merit. In order for a good to qualify for duty free treatment under subheading 9801.00.10(EN), HTSUS, the importer must satisfy CBP that the conditions of this subheading are met through documentation. The word "only" does not appear in 19 CFR 10.1(a). The regulatory language of 19 CFR 10.1 is clear that the port director must be satisfied that the requirements of subheading 9801.00.10(EN) are met and may require additional information as are necessary to substantiate the claim. An export invoice is listed in 19 CFR 10.1(b) as an example of documentation that may be requested. We find that the Port Director may require any documentation that would reasonably substantiate a claim under subheading 9801.00.10(EN), HTSUS, including export invoices.

We understand that the merchandise involved was being returned to **Varian** under warranty from overseas. If **Varian** has a database that lists the serial number of the good and the U.S. location where it was originally produced, this information could be considered as evidence

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of the U.S. origin of the

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merchandise. Further, Varian should also be able to establish that the good was shipped to an overseas customer. If Varian could establish that the good was

made in the U.S. and shipped overseas prior to being imported, the original export documents would not be required to establish that the goods were eligible for duty-free entry under subheading 9801.00.10(EN), HTSUS.

HOLDING:

The Port Director may require any documentation that would reasonably substantiate a claim under subheading 9801.00.10(EN), HTSUS, including export invoices. If Varian could establish that the good was made in the U.S. and shipped overseas prior to being imported, the original export documents would not be required to establish that the goods were eligible for duty-free entry under subheading 9801.00.10(EN), HTSUS.

This decision should be mailed by your office to the party requesting Internal Advice no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to CPB

personnel, and to the public on the CPB Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Monika R. Brenner, Chief

Valuation & Special Programs Branch

